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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KELL MICHAEL JENSEN and ALEX AGERHOLM

Appeal 2009-001268
Application 09/877,928
Technology Center 2400

Before JAMES D. THOMAS, JOSEPH L. DIXON, and JAY P. LUCAS,
Administrative Patent Judges.

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

The Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1-18. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

I. STATEMENT OF THE CASE

The Invention

The invention at issue on appeal relates to a method and apparatus for increasing the speed of information retrieval from a server (Spec. 4).

The Illustrative Claim

Claim 1, an illustrative claim, reads as follows:

1. A method to retrieve information, comprising:
 - receiving a first request for information from a client at a network node over a first connection;
 - establishing a second connection to retrieve said information;
 - detecting that said first connection is terminated prior to retrieval of said information over said second connection;
 - retrieving said information over said second connection;
 - receiving a second request at the network node for said information over a third connection;

determining whether said second request matches said first request, including whether said second request is from said client;

sending said information over said third connection in accordance with said determination; and

deleting said information at the network node upon delivery of said information to said client.

The References

The Examiner relies on the following references as evidence:

Tso	US 6,421,733 B1	July. 16, 2002
Burns	US 5,991,306	Nov. 23, 1999

WinRoute Pro 3.0 User's Manual (Tiny Software Inc., 1999), *available at* <http://portal.vaz.ru/doc/winroute%20manual3.pdf> (hereinafter "Winroute").

The Rejections

The following rejections are before us for review:

Claims 1, 2-5, 7-12, and 14-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Tso and Winroute, further in view of Burns.

Claims 6 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Tso and Winroute and Burns, and further in view of well-known Internet standards.

II. ISSUE

Has the Examiner erred in finding that the combination of Tso, Winroute, and Burns teaches or fairly suggests “deleting said information at the network node upon delivery of said information to said client,” as recited in independent claim 1?

III. PRINCIPLES OF LAW

Obviousness

“Obviousness is a question of law based on underlying findings of fact.” *In re Kubin*, 561 F.3d 1351, 1355 (Fed. Cir. 2009). The underlying factual inquiries are: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations of nonobviousness. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007) (citation omitted).

IV. FINDINGS OF FACT

The following findings of fact (FFs) are supported by a preponderance of the evidence.

Burns

1. Burns discloses a pull-based, intelligent caching system and method for delivering data over a network, a local service provider includes

a policy manager which defines and administrates rules for documents storage :

Deletion policies are a function of the content itself (e.g., its TTL tags), the subscriber patterns (e.g., how frequently the content is requested), the cost to request newer updated content, and the constraints imposed by capacity limitations of the cache memory.

(col. 11, ll. 15-19).

2. Burns also discloses that:

For instance, caching rules might call for caching resources that are routinely requested by many subscribers, but foregoing caching resources that are rarely or infrequently requested. The policy rules also coordinate cache maintenance by deciding when documents are out-of-date and how these documents are deleted from the cache memory 124.

(col. 10, ll. 53-58).

V. ANALYSIS

The Appellants have the opportunity on appeal to the Board of Patent Appeals and Interferences (BPAI) to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (citing *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

The Examiner sets forth a detailed explanation of a reasoned conclusion of unpatentability in the Examiner's Answer. Therefore, we look to the Appellants' Brief to show error in the proffered reasoned conclusion.

The Common Feature in Claims

Independent claim 1, recites, *inter alia*, “deleting said information at the network node upon delivery of said information to said client.” Independent claims 8 and 15, contain these similar limitations.

35 U.S.C. § 103(a) Rejection

With respect to independent claim 1, the Appellants contend that “Burns fails to teach and indeed teaches away from deleting information at a network node upon delivery of the information to a client.” (App. Br. 13). “In particular, Tso, Winroute, and Burns each describe[s] a caching mechanism and thus teach[es] away from deleting information upon delivery.” (Reply Br. 5).

The Examiner states that Burns teaches the argued limitation (Ans. 6, 11). The Examiner also states that “Burns teaches that deletion policies may be the function of ‘content itself’ . . . Burns also teaches that certain types of content, such as those rarely or infrequently requested, are less desirable to cache.” (Ans. 11), and “[a]t least some of the aborted client requests would have contained content ‘rarely and infrequently requested’ that would not normally be subject to caching” *Id.*

We disagree with the Examiner’s reading of the reference. We find that the paragraph of the Burns reference relied upon by the Examiner only discusses a deletion policy that depends upon the content itself, the subscriber patterns, the cost to request newer updated content, and the

constraints imposed by capacity of the cache memory (FF. 1). From the four explicitly listed factors, none of them relates to “deleting said information at the network node upon delivery of said information to said client,” as recited in the independent claim 1. Regarding the reasoning of the Examiner that it is predictable that some of the rarely and infrequently requested contents may be immediately deleted upon delivery (Ans. 12), we find no factual basis in Burns for the Examiner’s stated reasoning and conclusion. Again, we find that there is no teaching in Burns for deleting the information upon delivery (FFs. 1-2). In contrast to the Examiner findings, Burns explicitly teaches that the policy deletes the rarely and infrequently requested contents by measuring “how frequently the content is requested” (FF. 1), and thus foregoing the cache resources for those contents (FF. 2). It is contrary to the teachings of Burns that deleting rarely and infrequently requested contents upon delivery as argued by the Examiner, because without storage of the contents it is impossible to measure “how frequently the content is requested” (FF. 1).

We, therefore, find the Examiner’s position is untenable.

Because we agree with at least one of the Appellants’ contentions, we find that the Examiner has not made a requisite showing of obviousness as required to teach or fairly suggest the invention as recited in claim 1 by the combined of Tso, Winroute, and Burns. The rejection of the dependent claims 2-7 contains the same deficiency. The Appellants, thus, have

demonstrated error in the Examiner's reasoned conclusion for obviousness of the subject matter of claims 1-7.

The independent claims 8 and 15 contain the similar limitations to those found in independent claim 1. The Appellants present similar arguments as set forth with respect to independent claim 1 in response to the rejection of independent claims 8 and 15 (App. Br. 12-14).

As we found above in our discussion with respect to independent claim 1, we similarly find that the Appellants have demonstrated error in the Examiner's conclusion for obviousness of the subject matter of independent claims 8 and 15. The rejection of dependent claims 9-14 and 16-18 also contains the same deficiency. Hence, the Appellants' argument persuades us that the Examiner erred in rejecting claims 1-18.

We, therefore, cannot sustain the rejection of claims 1-18 under 35 U.S.C. § 103.

VI. CONCLUSION

We conclude that the Examiner erred in finding that the combination of Tso, Winroute, and Burns teaches or fairly suggests "deleting said information at the network node upon delivery of said information to said client," as recited in independent claim 1.

VII. ORDER

We reverse the obviousness rejections of claims 1-18 under 35 U.S.C.

Appeal 2009-001268
Application 09/877,928

§ 103(a).

REVERSED

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